

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 60 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ABDUL KADAR MOHMAD

Versus

GUJARAT ELECTRICITY BOARD

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Appearance:

MR RC KAKKAD for Petitioner

MR TUSHAR MEHTA for Respondent No. 2

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CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 15/04/97

ORAL JUDGEMENT

This Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 has arisen from dismissal of the Suit brought by the appellant for declaration and injunction in respect of additional bill for an amount of Rs. 14,066=27 p. which was issued by the Respondents to the Appellant on the footing that the appellant had

committed theft of electric energy.

The appellant is owner of a flour mill situated at Jamnagar. In order to enable the appellant to run his flour mill, 10 HP electrical connection is made available by the Respondents. In order to record consumption of electric energy, a meter is installed in the premises. According to the appellant, the meter reader employed by the respondents was recording the consumption of energy regularly and no irregularity with reference to the meter was noticed by him at any point of time. The say of the appellant was that because of the staggering of the power supply, the power was not being supplied to the flour mill for two days in a week, and therefore, the appellant had to keep his flour mill closed for 2 days in a week. The grievance which was made by the appellant was that though he had not committed any irregularity with reference to consumption of energy, the respondents had issued supplementary bill for an amount of Rs. 14,066=27 p. and called upon the appellant to make payment of the said amount. Under the circumstances, the appellant instituted Regular Civil Suit No. 90 of 1983 in the Court of the learned Civil Judge {SD} at Jamnagar and prayed to declare that bill for an amount of Rs. 14,066=27 p. issued by the respondents was illegal and void and that the appellant was not liable to pay the amount of disputed bill to the respondents. The appellant also claimed perpetual injunction restraining the respondents from disconnecting the power supply.

The respondents contested the Suit by filing written statement at Exh. 29. It was pleaded in the written statement that suit in the form in which it was presented to the Court was not maintainable. It was averred therein that on December 8, 1982 while checking the meter, it was found by the authorized officer that the appellant had tampered with the meter. What was claimed in the written statement was that as the appellant had committed theft of electricity power, the suit was liable to be dismissed.

Having regard to the pleadings of the parties, the trial court framed six issues for determination. On appreciation of evidence led by the parties, the trial court concluded that the respondents failed to prove that the appellant had committed theft of electric energy. As a necessary consequence, the trial Court further deduced that the supplementary bill issued by the respondents was illegal and the appellant was not bound to make payment covered by the said bill, to the respondents. In view of these conclusions, the trial Court decreed the Suit by

judgement and order dated December 2, 1986.

Feeling aggrieved by the above referred to decree, the respondents preferred Regular Civil Appeal No. 184 of 1988 in the District Court, Jamnagar. The learned Extra-Assistant Judge, Jamnagar, who heard the appeal had allowed the same by a judgement and decree dated May 6, 1995, giving rise to the present appeal.

Mr. R.C Kakkad, the learned counsel for the appellant submitted that the first appellate court had materially erred in law in holding that the appellant had committed theft of electric energy, and therefore, the second appeal deserves to be entertained. It was pleaded that in absence of any report of Electrical Inspector, the Rojkam and Report prepared by Deputy Engineer of Gujarat Electricity Board should not have been relied upon by the learned Appellate Judge for holding that the appellant had committed pilferage of electricity, and therefore also, the second appeal should be admitted. Lastly, it was contended that the respondent Board having not produced relevant record for perusal of the Court, adverse inference should have been drawn against the Board under Section 114 (g) of the Evidence Act and the appeal filed by the respondents ought to have been dismissed by the first appellate Court.

In my view, there is no merits in any of the contentions raised on behalf of appellant and the appeal cannot be entertained. The appellant had examined himself at Exh. 61 and he had also examined his brother Osman Mohammed at Exh. 62 to prove the case pleaded in the plaint. The Gujarat Electricity Board, on the other hand, had examined Deputy Engineer Mr. A.S Shah who was one of the members of Checking Squad at Exh. 67. The appellant had admitted in his evidence that checking of the meter was carried out by the Checking Squad on December 8, 1982 and his brother Osman Mohammed was present at that time. Osman Mohammed in his evidence has admitted that the Checking Squad had checked the meter on December 8, 1982 and had thereafter prepared checking report which is at Exh. 64 as well as Rojkam which is produced at Exh. 68. The witness has further admitted that the writings prepared by the officers comprising Checking Squad were explained to him in Gujarati language and thereafter his signature was obtained below the statement which is produced at Exh. 63. Mr. A.S Shah, Deputy Engineer of Gujarat Electricity Board has stated in his evidence that during the checking of the installation, seals of meter were found to have been tampered with and the power supply was found to have been

entered into cut-out instead of meter terminal cover. The witness has also asserted on oath that there were no seals on terminal cover. The irregularities mentioned by Mr. A.S Shah in his deposition are amply corroborated by contents of (i) Exh. 63 which is signed by Osman Mohammed; (ii) Checking report, which is produced at Exh. 64 and Rojkam, which is at Exh. 68 on the record of the case. The contents of the above referred to documents clearly establish that the glass of meter box was in a broken condition and the power supply through service line was first entered into cut-out and thereafter into the meter. The contents of those documents further show that terminal cover and the seals of the terminal cover were missing, whereas seals on the body of the meter were found to have been tampered with. Having regard to the documentary evidence on record, it cannot be said that any error is committed by the first appellate court in recording the finding that the appellant had committed pilferage of electricity. The said finding is further fortified by another clinching evidence on the record of the case. It is an admitted fact that just before one day of checking of meter by staff of raiding squad, the meter reader had visited the appellant mill on December 7, 1982 for recording electric consumption. The reading indicated that 70,986 units were consumed by the appellant. The bill prepared by the meter reader is produced at Exh. 58. The checking of the meter was carried out by the members of the raiding squad on December 8, 1982 and at that time the reading of meter indicated that 70,932 units were consumed by the appellants. Naturally, when the reading of the meter was carried out on next day i.e. on December 8, 1982, consumption would have been more but in no circumstances less. This tale-tell circumstances itself indicates that the appellant had committed theft of electric energy. The reduction in consumption of units is not explained by the appellant at all. Rule 30 of the Indian Electricity Rules makes provision regarding maintenance of service line and apparatus on consumer's premises. Sub-rule 3 and 4 of Rule 30 cast a duty upon consumer to take protection for safe-custody of the equipment and for maintaining safe condition of the installation. Similarly, Rule 56 of the Rules provides for fixing seals on the cut-out and the meter and it further provides that such seals shall not be broken by any person other than the supplier. Sub-rule 2 of Rule 56 cast a duty on consumer to ensure that no such seals are broken otherwise than by the supplier. In the present case, the appellant has failed to adduce any evidence to show that he had taken any precautions for the safe custody of the equipment and for maintaining the safe custody of the

installation, as required by rule 30 of the Rules. He has also not led any evidence to establish that he had not permitted any one else to break the seals other than supplier. The object of the rules is to ensure that the supplier of the electric energy is not defrauded by any consumer by tampering with measuring instrument of the supplier. The prohibition to break the seals put by the supplier on any cut-out, meter, maximum demand indicator or other apparatus extends not only to the consumer, but there is a liability cast on the consumer to use all reasonable means in his power to ensure that no such seals are broken by any person other than the supplier. The Gujarat Electricity Board has stipulated certain conditions for supply of electrical energy in exercise of powers conferred on it by Section 49 of the Electricity (Supply) Act, 1948. The constitutional validity of those conditions have been upheld by the High Court in the case of Patel Parshottamdas Vanmalidas v. Gujarat Electricity Board & Anr., 1987 (1) GLR 637. The condition No. 33-A defines "malpractice" and accordingly malpractice shall mean contravention by the consumer of any other law governing the supply and use of electricity. Looking to the definition of malpractice and the evidence on record, there is no manner of doubt that the appellant had committed malpractice within the meaning of condition No. 33-A of the conditions framed by the Gujarat Electricity Board and had dishonestly abstracted, used and consumed electric energy.

While allowing the appeal filed by the respondent, the first appellate court has correctly demonstrated as to how the judgement rendered by the trial Court is factually and legally incorrect. This is evident from the contents of para 17 to 19 of the judgment rendered by the First Appellate Court.

The finding that the appellant had committed theft of electric energy is based on proper appreciation of evidence. The said finding is a pure finding of fact and not of law at all. It is not brought to the notice of the court by the appellant that while reaching the said finding, any evidence led by the appellant is ignored by the first appellate court. As the finding that the appellant had committed pilferage of electric energy is based upon proper appreciation of evidence it is hereby upheld. The Supreme Court, time out of number, has ruled that it is not for the High Court to re-appreciate the evidence led by the parties while hearing Second Appeal and substitute finding of facts rendered by the first appellate court, which is final court of facts. Having regard to the limited

jurisdiction which is available to the High Court under Section 100 C.P.C., I am of the view that substantial questions of law as suggested by the appellant do not arise for consideration of the Court and the Second Appeal is liable to be dismissed.

For the foregoing reasons, Second Appeal fails and is summarily dismissed.

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Prakash\*